80-1388

No. _____

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

RICHARD WATERVAL,

Petitioner,

v.

DISTRICT COURT IN AND FOR EL PASO COUNTY, COLORADO, IN THE FOURTH JUDICIAL DISTRICT, AND THE HONORABLE BERNARD R. BAKER, one of the Judges thereof,

Respondents.

On Certiorari from the Supreme Court of Colorado

PETITION FOR WRIT OF CERTIORARI — STATE CIVIL CASE

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QUESTION PRESENTED

The issue is whether, consistently with the Due Process Clause of the Fourteenth Amendment, a Colorado court may exercise in personam jurisdiction over a Virginia lawyer in a lawyer malpractice case, when the Virginia client moves to Colorado midstream of the lawyer-client relationship and the lawyer continues to handle in Virginia the client's legal affairs involving Virginia assets.

PARTIES

In the Colorado trial court, the Petitioner, Richard Waterval, was a co-defendant. The remaining defendants, Willard J. Miller and Potomac Investment Advisors, Ltd., did not appear and default has been entered as to them. The plaintiff is Janet S. Stephens, and she is represented by Orville A. Kenelly, Attorney at Law, P. O. Box 6397, Colorado Springs, Colorado 80934.

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OPINIONS BELOW

The Opinion of the Colorado Supreme Court entered October 27, 1980, the Petition for Rehearing denied November 17, 1980, and the Order of Denial of the District Court of El Paso County, Colorado, are set out in the Appendix hereto. The decision of the Colorado Supreme Court is reported as *Waterval v. District Court*, 620 P.2d 5 (Colo., 1980).

JURISDICTION

This action seeking money judgment in the sum of $127,000 plus interests and costs for legal malpractice, draws in question the application of Colorado's long-arm statute (C.R.S. '73, 13-1-124) so as to acquire in personam jurisdiction over Petitioner violative of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

The federal constitutional question has been timely raised and preserved. Petitioner appeared specially in the Colorado trial court by way of a motion to quash service of process upon him in Virginia on the ground of lack of jurisdiction. The trial court held that the exercise of jurisdiction pursuant to Colorado's long-arm statute is reasonable and constitutional. An original proceeding in the nature of prohibition was brought in the Colorado Supreme Court on the ground that the trial court's assertion of jurisdiction over Petitioner for transacting business in Colorado violates due process of law. On October 27, 1980, the Colorado Supreme Court sustained the trial court on the basis that jurisdiction over Petitioner is constitutional under C.R.S. '73, 13-1-124(1)(a). Petitioner's timely petition for rehearing was considered and denied on November 17, 1980. This chronology parallels *World-Wide Volkswagen Corp. v. Woodson*, U.S. , 100 S.Ct. 559, 62 L.Ed. 2d 490 (1980).

The jurisdiction of the United States Supreme Court to review this decision of the Colorado Supreme Court on certiorari is conferred by 28 U.S.C. § 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the Constitition of the United States provides in Section 1 as follows: 'All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.'

Colorado's long-arm statute, C.R.S. '73 13-1-124, provides:

Jurisdiction of courts. (1) Engaging in any act enumerated in this section by any person, whether or not a resident of the state of Colorado, either in person or by an agent, submits such person, and, if a natural person his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising from:

(a) The transaction of any business within this state;

(b) The commission of a tortious act within this state;

(c) The ownership, use, or possession of any real property situated in this state; or

(d) Contracting to insure any person, property, or risk residing or located within this state at the time of contracting.

STATEMENT OF THE CASE

Proceedings Below

On July 23, 1979, service of process was made on Petitioner in his law office at 4316 Castle Place, Suite 2B, Falls Church, Virginia, wherein Janet S. Stephens charges Petitioner in the District Court in and for El Paso County, Colorado, with lawyer malpractice and the co-defendants (Willard J. Miller and Potomac Investment Advisors, Ltd.) with fiduciary breach. Contemporaneously, service of process was similarly had on the co-defendants in McLean, Virginia. Petitioner made special appearance by way of a motion to quash the service of process on the ground of lack of jurisdiction. The co-defendants made no appearance, and default has been entered as to them.

To support his motion to quash, Petitioner gave his deposition on January 14, 1980, in Fairfax, Virginia.

Hearing was held on Petitioner's motion to quash on July 6, 1980, in Colorado Springs, Colorado, in the District Court in and for El Paso County, Colorado. Janet S. Stephens was present and testified. The motion to quash was denied without formal order. A motion for rehearing was timely filed and heard. The formal Order of Denial thereof was entered June 5, 1980.

The trial court was sustained by the Colorado Supreme Court on October 27, 1980. Petition for rehearing was timely filed and was denied November 17, 1980.

Waterval Deposition

Richard A. Waterval has been a Virginia lawyer since 1962.

Janet S. Stephens' lawyer-client relationship with Waterval started in Virgina in October of 1970, while she was a resident of Virginia. She asked Waterval to handle her deceased husband's estate. The estate work was completed in the latter part of 1971. During that time, one aspect of Waterval's work was to review certain documents establishing a bank "discretionary account" for investment purposes between Stephens and a local bank there in Virginia. Then in 1972 she decided to move to Colorado. Either just before or just after she moved to Colorado, Waterval reviewed a lease of her Virginia house. The lease was managed by a local Virginia real estate office. Due to the problems inherent in non-resident ownership, she later decided to sell the house and entered into a listing agreement with the same real estate office. At her request, Waterval reviewed the listing agreement. Subsequently, a contract of sale was reviewed by Waterval at her request. In January of 1973, Waterval handled the closing. Upon his advice, the cash proceeds from the sale were added to the aforementioned "discretionary account." In the Spring of 1973, Willard J. Miller (Vice-President and Trust Officer of the "discretionary account" bank) told Waterval that he was leaving the bank and setting up his own investment firm, Potomac Investment Advisors. Miller stated to Waterval that he would like to solicit the Stephens' account. Waterval mailed to Stephens the Miller (Potomac Investment Advisors) proposal. Just prior to that, during a phone conversation with Stephens, Waterval suggested, as he had done many time before, that she move her money to a Colorado bank for trust management. Nevertheless, Stephens signed the Miller proposal and returned it to Waterval. After reviewing the transfer documents and confirming the proper transfer of the funds from the bank to Miller, Waterval delivered the said executed proposal documents to Miller. Waterval separately charged and separately collected from Stephens fees for (1) the estate, (2) the lease review, (3) the house closing, (4) the Miller proposal, and (5) the transfer of the Stephens' funds from the bank to Miller. The last billing was July of 1973 and was promptly paid.

Then in April of 1974, Stephens called Waterval and said she was dissatisfied and concerned about her investment portfolio with Miller and asked Waterval to speak with Miller about her concerns. Waterval did so, and told Miller he should maintain better communication with his (Miller's) customer. Miller said he would. Waterval did not charge Stephens for this call from her nor his visit to Miller's office.

From the beginning of the Stephens's account with Miller, routinely Miller would send Waterval copies of his Stephens' correspondence and quarterly reports. This was at Stephens' request so that Waterval would have a skeleton correspondence file in case Stephens had some questions or wanted Waterval to do something. In May of 1974, Waterval received a letter from Miller recounting the status of his (Miller's) customer's portfolio. There were some problems apparently in Miller's mind with some of the investments that Miller had made. Waterval immediately called Miller and said, " . . . hey, don't call me, call your client, your customer. There is no decision I could make here. He said he would do that." Then a month or so later a similar letter and dialogue took place. A month or so thereafter, Waterval received a copy of a letter from Miller to Stephens which listed " . . . a whole bunch . . ." of documents, including the two letters previously sent by Miller to Waterval. There were no further contacts with Waterval from either Miller or Stephens. Shortly thereafter, Waterval received no more quarterly reports.

Stephens Testimony

She moved to Colorado in 1972. Shortly after that, she communicated her new address to Mr. Waterval. To her mind he was still her counsel and lawyer. She said he was the only one she had since her husband's death. Shortly after she moved to Colorado, Miller set up his own company. Mr. Miller sent his new investment service proposal directly to Mrs. Stephens in Colorado. She communicated with Waterval, seeking his advice. She would have to check back into her bills, but she is sure Waterval charged her for this. There were several phone calls between Stephens in Colorado and Waterval in Virginia. He, Waterval, has never been to Colorado. They, Stephens and Waterval, both felt that the quarterly reports should be sent to both of them for a better watch over the account. She received communications from Miller saying, "Dick (Waterval) and I recommend." She talked to both Miller and Waterval frequently and was told by each that they, Miller and Waterval, were in touch with each other regarding her account. Waterval never sent her file to her. Waterval never communicated to her that this attorney-client relationship was at an end and that he was no longer her lawyer. Waterval never returned to her the duplicate original executed contract she had with Miller. She moved to Colorado in June of 1972. She rented a home at 1334 Pike Drive.

ARGUMENT

The lawyer is licensed in Virginia, not Colorado. The lawyer was at all times physically present in Virginia, not Colorado. The lawyer-client relationship arose in Virginia, not Colorado. The lawyer performed his services in Virginia, not Colorado. All the assets involved were situate in Virginia, not Colorado. The consequences alleged to result from the lawyer's conduct befell the investment account located in Virginia, not Colorado. Only some interim communications, purely incidental in character, had one terminus in Colorado. Such facts do not reasonably accord the due process necessary to validate Colorado jurisdiction.

This is a far reaching case of first impression in the United States, wherein a state long-arm statute is employed to gain jurisdiction over an ongoing lawyer-client relationship taken across state boundaries at the election of the client.

Petitioner prays that this Honorable Supreme Court accept review of this case and reverse the decision of the Colorado Supreme Court.

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX

IN THE DISTRICT COURT WITHIN AND FOR
THE COUNTY OF EL PASO AND STATE OF COLORADO

Civil Action No. 79CV1409
Division No. 10

JANET S. STEPHENS, Plaintiff, vs. WILLARD J. MILLER, Individually and d/b/a POTOMAC INVESTMENT ADVISORS, LTD., POTOMAC INVESTMENT ADVISORS, LTD., and RICHARD WATERVAL, Attorney at Law, Defendants.	)	**ORDER OF DENIAL**

THIS MATTER coming before the Court on a Motion For Rehearing on the Denial of Defendants' Motion To Quash, and the Court being fully advised,

DOES FIND:

1. The lawyer-client relationship did continue in the State of Colorado. This is fundamental in all of the evidence of the dealings of the parties before the Court.

2. It is true that the lawyer is licensed only in the State of Virginia. This, however, is not dispositive of him transacting business in behalf of his client in the State of Colorado, as it is clear that the Defendant did purposely avail himself of the privilege of acting in the State of Colorado, and of causing important consequences to the Plaintiff in the State of Colorado

3. The Court reaffirms that there was a substantial enough connection with the State of Colorado by Defendant Waterval to make the exercise of jurisdiction over him reasonable.

4. As stated before, these cases are never easy, and always subject to close calls of judgment.

5. The Court, in its final analysis, is confident that the exercise of jurisdiction pursuant to the long-arm statute of the State of Colorado, C.R.S. '73, 13-1-124, is reasonable and constitutional. For all of the above reasons, the Motion For Rehearing IS DENIED.

IT IS SO ORDERED this 5th day of June, 1980.

BY THE COURT:

Bernard R. Baker
District Court Judge

IN THE SUPREME COURT OF COLORADO

NO. 80SA332

RICHARD WATERVAL,	)	
	)	
Petitioner,	)	
	)	
v.	)	October 27, 1980
	)	
DISTRICT COURT in and for EL PASO COUNTY, Colorado, in the Fourth Judicial District, and the HONORABLE BERNARD R. BAKER, one of the Judges thereof,	)	
	)	
Respondents.	)	

Original Proceeding

EN BANC RULE DISCHARGED

Kane, Donley & Wills
Lee Wills
Colorado Springs, Colorado
Attorneys for Petitioner

Orville A. Kenelly
Colorado Springs, Colorado
Attorney for Respondents

JUSTICE QUINN delivered the opinion of the Court.

In this original proceeding under C.A.R. 21, Richard Waterval (petitioner) seeks relief in the nature of prohibition against the respondent district court on the ground that its assertion of jurisdiction over him for transacting business in the State of Colorado violates due process of law. We issued a rule to show cause. We now determine that the district court may constitutionally exercise jurisdiction over the petition under the Colorado long-arm statute, section 13-1-124(1) (a), C.R.S. 1973, and discharge the rule.

I.

Petitioner is an attorney licensed to practice law in Virginia. He, Willard J. Miller and Potomac Investment Advisors, Ltd., are defendants in pending litigation in the district court of El Paso County. The complaint was filed by Janet S. Stephens (Mrs. Stephens) and alleges that the petitioner was negligent and breached his fiduciary duty in relation to the establishment and administration of a discretionary investment account, thereby causing a substantial money loss to Mrs. Stephens. The facts underlying the jurisdictional issue in this matter can be reconstructed from testimony presented to the court on petitioner's motion challenging *jurisdiction.*[1]

In 1970 petitioner performed legal services for Mrs. Stephens in connection with her deceased husband's estate while Mrs. Stephens was still a resident of Virginia.

Part of these services consisted of establishing and overseeing the administration of a discretionary investment account for Mrs. Stephens with the American Bank at Arlington, Virginia. In 1972 Mrs. Stephens moved to Colorado. However, the attorney-client relationship continued. Petitioner reviewed several documents relative to the sale of Mrs. Stephens' Virginia home and in January 1973, he handled the closing for that sale. Upon petitioner's advice the cash proceeds from the house sale were added to the discretionary investment account. The petitioner and Mrs. Stephens exchanged correspondence over these matters and petitioner sent bills to Mrs. Stephens for services performed in connection with her deceased husband's estate and the house sale. Mrs. Stephens remitted payment to petitioner by checks on her account at a Colorado bank.

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[1] Our discussion of the facts relates to their significance for jurisdictional purposes only, and intimates nothing in regard to the merits of this controversy.

Early in 1973 Willard Miller, a trust officer of the Virginia bank overseeing the Stephens' discretionary investment account, advised petitioner that he was leaving the bank in order to establish his own investment firm, Potomac Investment Advisors, Ltd., at McLean, Virginia, and that he was interested in soliciting the Stephens account. Petitioner contacted Mrs. Stephens by placing telephone calls to her in Colorado and on several occasions they discussed the feasibility of transferring her assets to Miller's new investment service. On February 20, 1973, petitioner mailed the proposed investment contract, along with an explanatory letter of its general provisions, to Mrs. Stephens at her Colorado address. Pursuant to petitioner's letter, Mrs. Stephens executed the contract on February 22, 1973, and returned it to him by mail. Petitioner reviewed the investment contract and transfer-documents, confirmed the transfer of funds from the Virginia bank to Potomac Investment Advisors, Ltd., and then delivered the executed documents to Miller. Petitioner later billed Mrs. Stephens for these services and, once again, she remitted payment to him by check drawn on her Colorado account.

Shortly after the investment account with Potomac Investment Advisors, Ltd., was established, Mrs. Stephens, acting on the joint recommendation of petitioner and Miller, consented to the liquidation of the account assets and their reinvestment in real estate investment trusts. Quarterly reports on the investment account were sent to Mrs. Stephens and petitioner. Petitioner periodically exchanged phone calls with Mrs. Stephens about the account and informed her that he was in frequent contact with Miller. Toward the end of 1973, the quarterly reports from Miller indicated a steady decline in the market value of the investment assets. According to Mrs. Stephens, she telephoned the petitioner about the declining assets and he relieved her concern and said that he would discuss the matter with Miller. Petitioner, however, failed to take corrective action to minimize the losses.

Mrs. Stephens commenced an action against petitioner in July 1979. The summons and complaint were served personally on him in his office in Falls Church, Virginia. The claim against petitioner alleges, in pertinent part, as follows:

> "As Plaintiff's attorney, the Defendant, Waterval, actively recommended the transfer of Plaintiff's assets to Potomac Investment Advisors and actively recommended that the portfolio be overconcentrated in the real estate investment trust area.

"Subsequent to the overconcentration, Defendant, Waterval, was kept informed on the status of the account and had continuous contact with the Defendants, Potomac Investment Advisors Ltd. and Willard J. Miller, concerning the account.

"Despite his active role as an attorney and investment advisor to Plaintiff, the Defendant, Richard A. Waterval, took no steps to advise the Plaintiff to take corrective action when the need for such became obvious, and made no requests or demands of the other Defendants to minimize losses in the account, even though he had a duty to do so.

"As a direct and proximate result of the actions and inactions of the Defendant, Richard A. Waterval, and as a direct and proximate result of his failure to carry out the fiduciary obligations owed to the Plaintiff, the Plaintiff has been damaged in the amount of $127,000.00."

The petitioner filed a motion to quash the summons, contending that the court's exercise of *in-personam* jurisdiction was invalid. The district court conducted an evidentiary hearing, considered Mrs. Stephens' testimony and the petitioner's deposition, and denied the motion. It concluded that the petitioner transacted business in Colorado with Mrs. Stephens and caused important consequences to her in the state; therefore, the exercise of jurisdiction was proper under provisions of section 13-1-124, C.R.S. 1973. Original proceedings followed in this court.

We conclude that the district court's exercise of jurisdiction over the petitioner comported with due process of law under the federal and state constitutions. *U.S. Const.* Amend. XIV; *Colo. Const.* Art. II, Sec. 25.[2]

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[2] The district court did not attempt to exercise jurisdiction over the petitioner under section 13-1-124(1)(b), C.R.S. 1973, which provides that the commission of a tortious act in Colorado is a submission to its jurisdiction. Consequently, we do not address the issue whether jurisidiction validly could be asserted under the tort provisions of the long-arm statute. Compare *Ferrari v. District Court*, 185 Colo. 136, 522 P.2d 105 (1974), *Lichina v. Futura, Inc.*, 260 F. Supp. 252 (D. Colo. 1966), with *Jenner and Block v. District Court*, 197 Colo. 184, 590 P.2d 964 (1979), *Vandermee v. District Court*, 164 Colo. 117, 433 P.2d 335 (1967); *see Kulko v. Superior Court*, 436 U.S. 84, 98 S.Ct. 1690, 56 L. Ed. 2d 132 (1978).

II.

Section 13-1-124 (1) (a), C.R.S. 1973, provides:

> "Engaging in any act enumerated in this section by any person, whether or not a resident of the State of Colorado, either in person or by agent, submits such person . . . to the jurisdiction of the courts of this state concerning any cause of action arising from: (a) the transaction of any business within this state . . . ."

In enacting the long-arm statute, the Colorado legislature intended to extend the jurisdiction of Colorado courts to the fullest extent permitted by the due process clause of the United States Constitution. *Safari Outfitters, Inc.* v. Superior Court, 167 Colo. 456, 448 P.2d 783 (1969). Due process requires that in order to subject a non-resident defendant to an *in-personam* judgment, the defendant "have certain minimum contacts with [the state] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' " *International Shoe Co. v. Washington,* 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95, 102 (1945). A person need not be physically present within the state in order to transact business therein. Contact with the forum state by telephone or mail may furnish the necessary minimum contacts essential for the exercise of jurisdiction under the transaction-of-business standard. *E.g., McGee v. International Life Insurance Co.,* 355 U.S. 220, 78 S. Ct. 199, 2 L. Ed. 2d 223 (1957); *White-Rodgers Co. v. District Court,* 160 Colo. 491, 418 P.2d 527 (1966).

Where a single act or a minimum contact is the basis of jurisdiction, we have utilized a three-pronged test in determining whether the activity of the non-resident falls within the limits of *in-personam* jurisdiction:

> "First, the defendant must purposefully avail himself of the privilege of acting in the forum state or of causing important consequences in that state. Second, the cause of action must arise from the consequences in the forum state of the defendant's activities. Finally, the activities of the defendant or the consequences of those activities must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable." *Van Schaack v. District Court*, 189 Colo. 145, 147, 538 P.2d 425, 426 (1975), quoting *White Lumber Sales, Inc. v. Sulmonetti*, 252 Ore. 121, 448 P.2d 571 (1968).

Accord, Mr. Steak v. District Court, 194 Colo. 519, 574 P.2d 95 (1978); *At Home Magazine v. District Court*, 194 Colo. 331, 572 P.2d 476

(1977); *Duckworth v. M. M. Cole Publishing Co.*, 38 Colo. App. 33, 552 P.2d 520 (1976). "[W]here there are substantial continuous contacts with the forum state, jurisdiction may be found even when the cause of action does not arise out of the forum related activity." *Tucker v. Vista Financial Corp.*, 192 Colo. 440, 443, 560, P.2d 453, 456 (1977); *see Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437, 72 S. Ct. 413, 96 L. Ed. 485 (1952); *Wilkerson v. Fortuna Corp.*, 554 F.2d 745 (5th Cir. 1977), *cert. denied*, 434 U.S. 939, 98 S. Ct. 430, 54 L. Ed. 2d 299 (1977).[3]

The instant case does not neatly fit into either the "single contact" or "continuous contact" category. The petitioner's Colorado activities in relation to Mrs. Stephens extended over a period of approximately two years but were less than continuous although more than singular. And the cause of action arises only in part from the consequences of petitioner's activities in this state — his initial transmission of the investment contract to Mrs. Stephens, and his prior and subsequent communications and actions regarding that contract. Part of the legal predicate for the cause of action relates to the petitioner's activities in Virginia — his supervision of the asset transfer to Miller and his subsequent action or inaction with respect to the monitoring of the investment contract. Recognizing that the resolution of jurisdictional issues of this type frequently involves an *ad hoc* analysis of the facts, *Kulko v. Superior Court of California*, 436 U.S. 84, 98 S. Ct. 1690, 56 L. Ed. 2d 132 (1978); *Elliot v. Edwards Engineering Corp.*, 257 F. Supp. 537 (D. Colo. 1965) *aff'd*, 364 F.2d 991 (10th Cir. 1966); *Colorado Builder's Supply Co. v. Herman Brothers Construction Co.*, 134 Colo. 383, 304 P.2d 892 (1956), we must apply basic principles of

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3

The principles pertaining to a state's exercise of *inpersonam* jurisdiction over a foreign corporation have been summarized as follows:

> "If there are substantial contacts with the state, for example a substantial and continuing business, and if the cause of action arises out of the business done in the state, jurisdiction will be sustained. If there are substantial contacts with the state, but the cause of action does not arise out of these contacts, jurisdiction may be sustained. If there is a minimum of contacts, and the cause of action arises out of the contacts, it will normally be fair and reasonable to sustain jurisdiction. But if there is a minimum of contacts, and the cause of action does not arise out of the contacts, there will normally be no basis of jurisdiction, since it is difficult to establish the factors necessary to meet the fair and reasonable test." 2*J. Moore, Federal* Practice ¶ 4.25[5] (1980).

in-personam jurisdiction to the evidence adduced at the motion hearing and determine whether the district court's exercise of jurisdiction over the petitioner passes constitutional muster.

III.

Initially, we note that the evidence in the record adequately demonstrates the petitioner's purposeful election to cause important consequences in Colorado. His was not a single, isolated act, the effects of which occurred fortuitously in this state. *Cf., World-Wide Volkswagen Corp. v. Woodson,* _____ U.S. _____, 100 S. Ct. 559, _____ L. Ed. 2d _____ (1980) (sale of automobile by corporation in New York insufficient to support exercise of Oklahoma jurisdiction over corporation in products liability suit for injuries sustained in Oklahoma accident). Nor was the petitioner's contact with the forum state thrust upon him against his will. *See Hanson v. Denckla*, 357 U.S. 235, 78 S. Ct. 1228, 2 L. Ed. 2d 1283 (1958). Rather, petitioner freely and deliberately chose to continue in Colorado an attorney-client relationship which originated in Virginia.

The petitioner's contacts with Mrs. Stephens in Colorado, while not continuous, did extend over the years 1972 and 1973; they were personal in character and resulted in a tangible and monetary benefit to petitioner; and they were intended to, and did in fact, impact directly upon the legal and financial interests of a Colorado resident. The nature and duration of petitioner's activities in relation to a Colorado resident readily distinguishes this case from *Safari Outfitters v. Superior Court, supra*, where all the non-resident's activities were directed from a Chicago office to persons outside Colorado. Under these circumstances, the petitioner's activities in connection with the forum state were such that he reasonably could anticipate being held answerable in this state for those activities. *See World-Wide Volkswagen Corp. v. Woodson,* _____ U.S. at _____, 100 S. Ct. at 567, _____ L. Ed. 2d at _____.

Next, it is apparent that the cause of action here stems in part from the adverse consequences of petitioner's legal and financial counseling directed to a Colorado resident during the two year period. Assuming *arguendo* that petitioner's activities in Virginia might be considered as "the center of gravity" of the controversy, or that Virginia might be the most convenient location for litigation, these considerations relate essentially to choice of law and selection of forum, and not to personal jurisidiction. *Hanson v. Denckla*, 375 U.S. at 254, 78 S. Ct. at 1290, 2

L. Ed. 2d at 1298. Nor is it significant for jurisdictional purposes that the contract had not yet been executed by Potomac Investment Advisors, Ltd., when Mrs. Stephens signed it in Colorado:

> "[E]ven though the 'last act,' such as the signing of a contract, for example, may have occurred outside the geographical confines of the forum state, nevertheless ths statutory test of a claim arising out of the transaction of any business within the state may still be met by showing *other* 'purposeful acts,' performed within the forum state by the defendant in relation to the contract, even though such acts were preliminary, or even subsequent, to the execution of the contract itself." *Knight v. District Court*, 162 Colo. 14, 20, 424 P.2d 110, 112-13 (1967).

The following activities of petitioner produced consequences in this state that are significant for jurisdictional purposes: petitioner's telephone contacts and correspondence with Mrs. Stephens about the investment contract prior to its execution; the transmittal of the contract to her for her signature — the incipient act underlying the cause of action — and petitioner's request that it be returned to him for review and implementation; and his subsequent communications with her by mail and telephone about the investment assets until their sudden decline in value in late 1973 and early 1974. Supplementing these in-state activities is the petitioner's failure to communicate to Mrs. Stephens about the need for corrective action to offset the 1973-74 losses. With a professional relationship of substantial duration and the client's claimed reliance upon her attorney's advice with respect to the client's financial interests, the attorney's failure to communicate with the client or to take any action in regard to the client's interests may be as productive of adverse consequences to the client in the forum state as patently unreasonable advice personally delivered in that state or improper conduct physically performed therein.

We are satisified that the above-described activities of the petitioner and their consequences to a Colorado resident provide a sufficient connection with this state so as to render reasonable the exercise of *in-personam* jurisdiction over the non-resident petitioner. *Mr. Steak v. District Court, supra; Van Schaack Co. v. District Court, supra; At Home Magazine v. District Court, supra; Duckworth v. M. M. Cole Publishing co., supra; Restatement (Second) of Conflict of* Laws, § 37 (1971). We conclude, therefore, that the exercise of jurisdiction by the district court under the circumstances of this case comports with

basic notions of fair play and substantial justice implicit in due process of law.

The rule to show cause is discharged.

IN THE SUPREME COURT OF THE STATE OF COLORADO
No. 80SA332

RICHARD WATERVAL,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	ORIGINAL PROCEEDING
DISTRICT COURT in and for	)	
EL PASO COUNTY, Colorado,	)	
in the Fourth Judicial	)	
District, and the Honorable	)	
BERNARD R. BAKER, one of	)	
the Judges thereof,	)	
	)	
Respondents.	)	

Upon consideration of the Petition for Rehearing filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED that said Petition shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, NOVEMBER 17, 1980.

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Supreme Court
STATE OF COLORADO
Certified to be a full, true and correct copy
Nov. 17, 1980
DAVID W. BREZINA
Court Clerk of the Supreme Court
Seal By Linda L. Masics
Deputy Clerk